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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/520,394	01/04/2005	Ezat Khoshdel	J3678(C)	5147

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EXAMINER	
HOFFER, SUSANNA MARIE	
ART UNIT	**PAPER NUMBER**
1615	
MAIL DATE	**DELIVERY MODE**
02/05/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/520,394	KHOSHDEL ET AL.	
	Examiner	Art Unit	
	Susanna Hoffer	1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *07 December 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-12 and 16-19* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-12 and 16-19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *07 December 2007*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Acknowledgement is made for the reply filed December 7, 2007. Claim 1 has been amended, new claims 16-19 have been added, and claims 13-15 have been canceled. The 35 USC 112 and 101 rejections have been withdrawn in view of the cancellation of claims 13-15. The previous Office Action included a typographical error regarding the numbering of the claims, which should have been clear from the text of the rejections. The claim numbers are corrected below.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-4 and 6-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barton et al. (WO 96/10387).

Barton et al. teach a composition comprising hair stimulants including xanthine, such as theophylline (abstract). The composition can also include citric acid (p. 5, line 25). Xanthine is in an amount from 0.1 to 5%, preferably 1% (p. 3, line 27). The composition can further contain a surfactant and a conditioning agent, such as cationic quaternary ammonium (p. 5, lines 4-14). When the composition is in the form of a styling gel, which is a leave on composition, styling agents such as polyvinyl pyrrolidone and D-panthenol can be added (p. 4, lines 23-25). Examples 2 and 3 taught by Barton et al. comprise aqueous bases (p. 9-11; lines 19-6).

Barton et al. do not teach that the alpha hydroxy acid and/or its salt if optically active are in the L-form or the amount of the acid/salt in the total formulation.

However, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use the L-form of the optically active acids in the composition because the L-form is the naturally occurring stereoisomer. One would have been motivated to use a particular stereoisomer because frequently only one form is biologically active.

It would have also been obvious to find the optimum amount of citric acid or tartaric acid to use in the composition. The adjustment of particular conventional working conditions (e.g., determining a result effective amount of the ingredient beneficially taught by the cited reference, especially within the broad range instantly

claimed) is deemed merely a matter of judicious selection and routine optimization which is well within the purview of the skilled artisan.

Claims 1 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barton et al. (WO 96/10387) in view of Jeanjean (FR 2,751,541).

Barton et al. is discussed above. The reference does not teach the specific use of caffeine as the xanthine in the composition.

Jeanjean et al. teach a cosmetic composition for the treatment of hair loss comprising caffeine (abstract).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to use caffeine in the hair care composition because Jeanjean et al. teach that caffeine is a beneficial ingredient for the hair. One would have been motivated to combine these two references because both teach compositions for the hair and caffeine is a xanthine well known to those of ordinary skill in the art.

Response to Arguments

Applicant's arguments filed December 7, 2007 have been fully considered but they are not persuasive.

Applicant argues that there is nothing in Barton et al. or Jeanjean that discloses or suggests methods of lengthening hair, that the alpha-hydroxy acid component is merely used as a buffer, and that there is no disclosure of the ratio of alpha-hydroxy carboxylic acid to xanthine component as required by the subject claims.

Applicant's arguments are not persuasive. One of ordinary skill in the art at the time the invention was made would have been able to readily determine the optimal ratio of xanthine to alpha-hydroxy acid through routine experimentation.

Also, "wherein the leave on hair treatment composition is applied to lengthen the hair, decrease the volume of the hair and/or to increase the high humidity style retention of the hair" does not further limit the claim because it is a statement of intended use and the composition taught by Barton et al. would have inherently produced such benefits when applied to the hair.

New Rejections

The following rejections are made in view of the newly added claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barton et al. (WO 96/10387) in view of Jeanjean (FR 2,751,541).

Barton et al. is discussed above. The reference does not teach the specific use of caffeine as the xanthine in the composition.

Jeanjean et al. teach a cosmetic composition for the treatment of hair loss comprising caffeine (abstract).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to use caffeine in the hair care composition because Jeanjean et al. teach that caffeine is a beneficial ingredient for the hair. One would have been motivated to combine these two references because both teach compositions for the hair and caffeine is a xanthine well known to those of ordinary skill in the art.

Claims 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barton et al. (WO 96/10387).

Barton et al., which is discussed above, does not teach the ratio of xanthine to alpha-hydroxy acid or the total amount of these two components present in the composition. However, as stated above, determining the amounts of ingredients taught to be beneficial by the cited references is a matter of routine optimization by one of ordinary skill in the art.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susanna Hoffer whose telephone number is (571)272-9345. The examiner can normally be reached on Monday - Friday, 9:00 a.m.-5:00 p.m., EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on (571)272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SMH

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SUPERVISORY PATENT EXAMINER
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